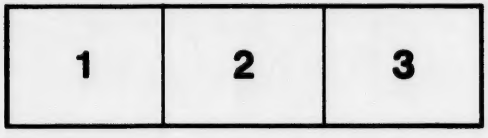

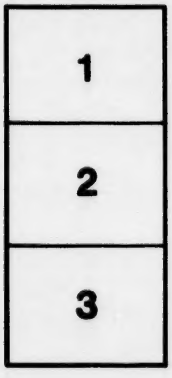

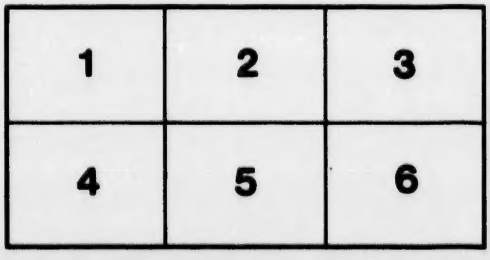

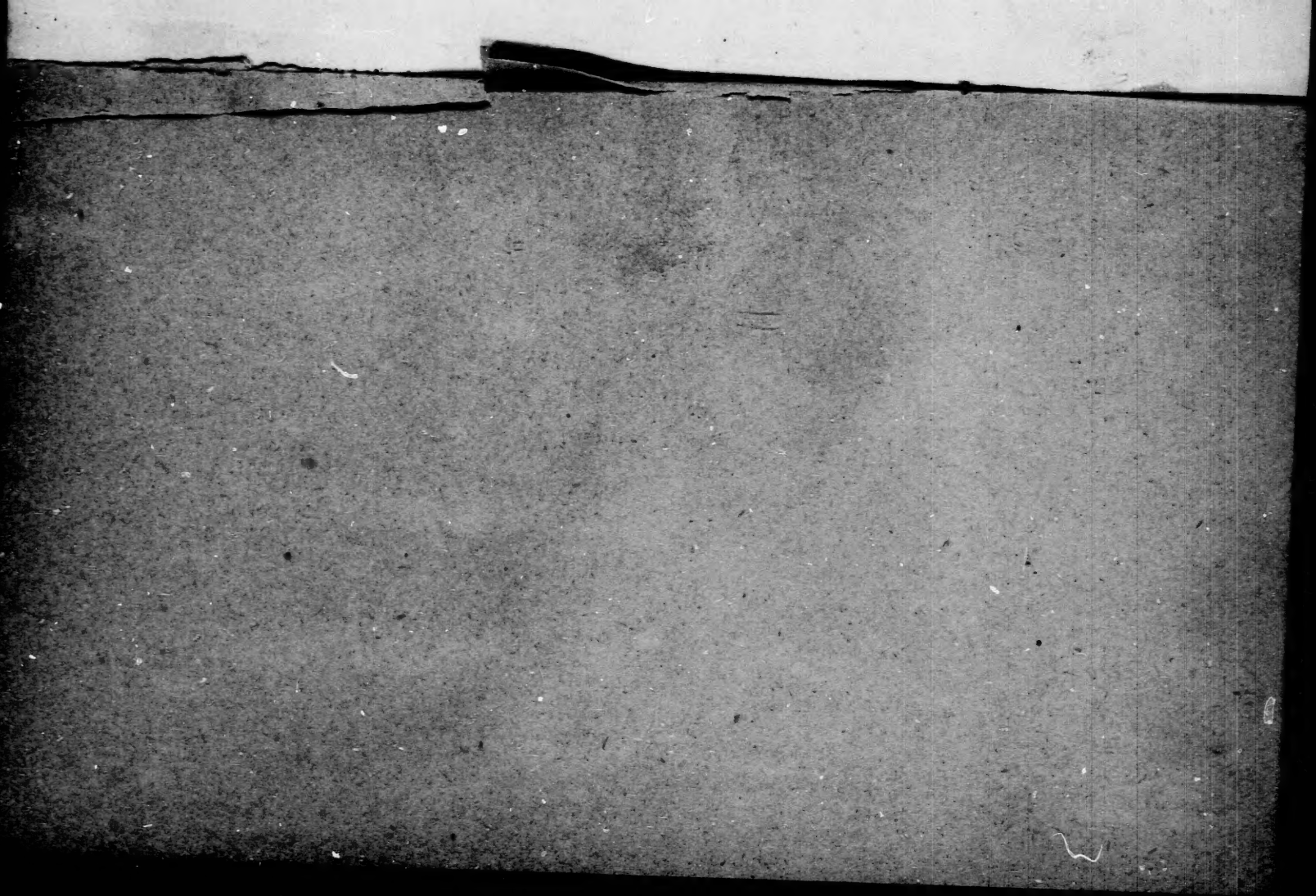

EXAMINATION QUESTIONS AND ANSWERS

ON

CRIMINAL LAW.

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CRIMINAL LAW.

PAPER I.

1. Q.—Explain and illustrate by examples *excusable homicide* and *justifiable homicide*.

A.—*Excusable homicide* is of two kinds :—

(i.) *Homicide se defendendo* upon sudden affray in defence of a man's wife, child, parent or servant, and not from any vindictive feeling.

(ii.) *Homicide per infortunium*, by misadventure or accident. When a person doing a lawful act, without any intention of hurt, by accident kills another.

N.B.—The act must be *lawful*, done in a *proper manner* and with *due caution*.

E.g.—In a sparring match with gloves, or other lawful amusement fairly conducted in a private room.

Correcting in moderation a child, servant, scholar or criminal entrusted to one's charge.

If, whilst doing a lawful but dangerous act, a person uses such a degree of caution as to make it improbable that any danger or injury will arise to another or others.

Justifiable homicide, where no guilt or even fault attaches to the slayer, is of three kinds:—

(i.) Execution of a criminal by the proper officer in strict conformity with his legal sentence.

(ii.) Where an officer of justice or his assistant in the legal exercise of a particular duty kills a person who resists or prevents him from executing it.

Homicide is justifiable on this ground in the following cases:—

(*a*) When a Peace-Officer or his assistant in the due execution of his office, whether in a civil or criminal cause, kills one who is resisting his arrest or attempt to arrest.

(*b*) When prisoners in gaol or going to gaol assault the gaoler or officer, and he, in his defence, or to prevent an escape, kills any of them.

(*c*) When an officer or private person, having legal authority to arrest, attempts to do so, and the other flies and is killed in the pursuit.

N.B.—The ground of arrest must be a felony or the infliction of a grievous wound.

(*d*) When an officer, in endeavouring to disperse a mob in a riot or rebellious assembly, kills one or more of them, he not being able otherwise to suppress the riot.

(iii.) When the homicide is committed in the pre-

vention of a forcible and atrocious crime:—highway robbery, burglary, rape.

In justifiable homicide the killer is engaged in an act which the law allows or enjoins *positively*; while in excusable homicide, he is about something which the law *negatively* does not prohibit. In neither case is there the *malice* which is an essential of a crime.

Harris, 163 *etseq.*

2. Q.—Distinguish *larceny* and *robbery*.

A.—*Larceny* is the *wilfully* wrongful taking *possession* of the goods of another, with intent to deprive the owner of his *property* in them.

Harris, 213.

Robbery is the felonious and *forcible* taking from the person of another, or in his presence against his will, of any money or goods to any value, by violence or putting him to fear. The gist of this crime is the *force* or *bodily fear*.

Harris, 240.

3. Q.—Give an example of a crime shewing the meaning of "Principal in the first degree," "Principal in the second degree," "Accessory before the fact," "Accessory after the fact."

A.—A. incites B. and C. to murder a person. B.

enters the house and cuts the man's throat, while C. waits outside to give warning in case anyone should approach. B. and C. flee to D., who, knowing that the murder has been completed, lends horses to facilitate their escape. Here B. is principal in the first degree, C. is principal in the second degree, A. accessory before the fact, and D. accessory after the fact.

Harris, 40.

1. Q.—Is it a good defence to an indictment for bigamy: (*a*) that the first marriage was a voidable one; (*b*) that the second marriage would have been void for consanguinity; (*c*) that the prisoner *bona fide* believed his wife was dead at the time he contracted the second marriage?

A.—(*a*) No; but otherwise if void; (*b*) no; (*c*) no.

Harris, 140.

5. Q.—A man by night breaks into the dwelling house of another for the purpose of taking his own goods which are wrongfully detained there. Is he guilty of any, and if so, what crime? Reasons.

A.—He is not guilty of any crime. A very necessary ingredient is wanting to make the act the crime of burglary, viz.: the *intent* to commit a felony. To constitute a burglary there must be an intent to

commit some felony in the dwelling house, otherwise the breaking and entry will only amount to a trespass.

6. Q.—For what different purposes may evidence be given of other offences having been committed by the prisoner, than the one for which he is being tried?

A.—The general rule is that evidence of one offence is inadmissible on the trial of the prisoner for another offence, but there are exceptions:

(i.) In *treason* other overt acts may be given in evidence, if they directly prove any overt acts which are laid. And in conspiracy, sedition, libel and other similar offences, wide limits are given to the reception of evidence, inasmuch as the offences can only be estimated by the surrounding circumstances.

(ii.) When it is necessary to prove the *guilty knowledge* of the defendant, evidence may be given of his having committed the same offence before:

> *E.g.*—In cases of uttering forged bank notes and counterfeit coin, obtaining by false pretences and receiving stolen property.

(iii.) When it is necessary to prove *malice* or *intent*

on the part of the defendant, evidence of other offences may under some circumstances be given.

E.g.—In a trial for murder, evidence of former unsuccessful attempts or threats to murder would be admissible.

Harris, 457.

PAPER II.

1. Q.—Of what crime, if any, is a man guilty who merely sees a murder committed, and takes no steps to have the murderer punished, but keeps it secret?

A.—Misprision of felony, which is the concealment of some crime, other than treason, committed by another. There must be knowledge of the offence merely without any assent, for if a man assent he will either be a principal or accessory.

Harris, 102.

2. Q.—Mention the four pleas known as *special pleas in bar* in criminal cases.

A.—(i.) *Autrefois acquit.* When a person has been indicted for an offence and regularly acquitted he cannot afterwards be indicted for the same offence, provided that the indictment were such that he could not have been lawfully convicted on it.

(ii.) *Autrefois convict.* A former conviction may be pleaded in bar of a subsequent indictment for the same offence; and this, whether judgment were given or not.

(iii.) *Autrefois attaint.* Formerly when a person

was attainted, so long as the attainder was in force he was considered dead. Therefore a plea of an already existing attainder was a bar to a subsequent indictment for the same or any other felony, on the ground that such second prosecution of a person already dead and whose property was forfeited was useless. But now an attainder is no bar unless for the same offence as that charged in the indictment, so that practically the plea of *autrefois attaint* is a thing of the past.

(iv.) *Pardon* may be pleaded not only in bar to the indictment as in the first three pleas, but also after verdict in arrest of judgment, or after judgment in bar of execution; but it must be pleaded as soon as the defendant has an opportunity of doing so, otherwise he will be considered to have waived the benefit of it.

These pleas are termed "special" to distinguish them from the general issue, and "in bar" because they shew the reason why the defendant ought not to answer at all, nor put himself upon his trial for the crime alleged, and thus they are distinguished from dilatory pleas which merely postpone the result.

Harris, 403.

3. Q.—At what stage, and on what grounds, may a

motion in arrest of judgment be made in a criminal case, and what is the effect of the success of such a motion?

A.—The defendant must move in the interval between conviction and judgment. The motion must be grounded on some defect apparent on the face of the record and *not* on some irregularity in the proceedings. The objection must be a substantial one, such as want of sufficient certainty in the indictment as to the statement of facts, &c. If judgment is arrested the proceedings are set aside, no judgment is given and the prisoner is discharged. But, unlike an ordinary acquittal, the defendant may be indicted again on the same facts.

Harris, 477.

4. Q.—If A. and B. combine together to break into the house of C., for the purpose of taking goods of A., which are wrongfully detained there, but do not succeed in effecting an entrance, are they guilty of any, and if so, what crime? Reasons.

A.—They are guilty of *conspiracy* which is a *combination* of two or more persons to do an unlawful act, whether that act be the final object of the combination or only a means to the final end, which may be lawful—and whether that act be a crime or an act

hurtful to the public, a class of persons or an individual. In this case the ultimate purpose of the conspiracy is lawful, but the means to be resorted to are criminal or at least illegal, in other words, a legal purpose is to be effected with a corrupt intent or by improper means.

Harris, 134.

5. Q.—Mention all the instances you can in which a prisoner may be found guilty of a different crime from that charged in the indictment.

A.—Upon an indictment for *robbery*, a prisoner may be found guilty of an *assault with intent* to rob. Upon an indictment for *larceny* he may be found guilty of *embezzlement* and *vice versa*. And wherever a person is indicted for an offence which includes in it an offence of minor extent and gravity of the same class, the prisoner may be convicted of such minor offence. Upon an indictment for *murder* he may be convicted of *manslaughter*, and so of *simple larceny* if indicted for *stealing in a dwelling house* or any other aggravated form of larceny.

Harris, 473.

6. Q.—On the trial of an indictment for conspiracy to commit a felony what difference does it make whether the felony was actually carried out or not?

A.—If the purpose of the conspiracy is *actually carried out*, the conspiracy is merged in the felony; so that after a conviction for the felony a defendant cannot be tried for the conspiracy.

Harris, 138.

7. Q.—Distinguish *burglary* from *house-breaking*, and *larceny* from *false pretences*.

A.—*Burglary* is the breaking and entering of the *dwelling* or *mansion house* of another in the *night-time* (9 p.m. to 6 a.m.) with intent to commit a felony therein. It is thus defined by *The Larceny Act*: "Every one who enters the dwelling-house of another with intent to commit any felony therein, or being in such dwelling house commits any felony therein, and in either case breaks out of such dwelling house in the night-time is guilty of burglary."

R.S.C., *c.* 164, *s.* 37.

In *burglary* there is a limitation as to *time*—night; as to the *place*—a dwelling house; as to the *manner*—the breaking and entering or breaking out.

In *house-breaking* the crime may be committed by day and has a wider limitation with respect to the buildings which are its subjects.

Q. *v.*, *R.S.C.*, *c.* 164, *s.s.* 40, 41.

Larceny.—(*Vide* answer to Q. 2, Paper I.)

In *larceny* the owner of the thing stolen *has no intention* to part with his property therein to the person taking it, although he may intend to part with the possession. In *false pretences* the owner *does intend* to part with his property in the money or chattels, but it is obtained from him by fraud.

Harris, 261.

PAPER III.

1. Q.—Is a *felony* necessarily a more serious offence than a *misdemeanour*? Give an example illustrating your answer.

A.—No. No one will maintain that *perjury*, which is a misdemeanour, is of less gravity than *simple larceny*, which is a felony. As a rule, however, the more serious crimes are felonies.

Harris, 8.

2. Q.—Define the crime of *riot*.

A.—A *riot* is a tumultuous disturbance of the peace by *three* or more persons, assembling together of *their own authority*, with intent mutually to assist one another against any who oppose them in the execution of some enterprise of a *private* nature, and afterwards actually executing the same, in a violent and turbulent manner to the terror of the people, and this whether the act intended be of itself *lawful* or *unlawful*.

Harris, 109.

3. Q.—Explain and give an example of *homicide per infortunium*. Is it a criminal offence, and if so, what?

A.—*Homicide per infortunium* is the second kind of excusable homicide.—(*Vide* answer to Q. 1, Paper I.)

It is not a crime, as R. S. C. c. 162, s. 6, enacts that "no punishment or forfeiture shall be incurred by any person who kills another by *misfortune*, or in his own defence or in any other manner without felony."

4. Q.—Distinguish between the crimes of *larceny* and *embezzlement*.

A.—*Larceny*.—(*Vide* answer to Q. 2, Paper I.)

Embezzlement is the unlawful appropriation to his own use, by a servant or clerk, of money or chattels received by him for and on account of his master or employer.

The latter differs from the former by clerks or servants in this respect. Embezzlement is committed in respect of property which is not at the time in the actual or legal possession of the owner, whilst in larceny it is:—

> *E.g.*—A clerk receives $20.00 from a person in payment of some goods sold by his master; he at once puts it into his own pocket, appropriating it to his own use—this is *embezzlement*.
>
> The clerk appropriates to his own use $20.00 which he takes from the till—this is *larceny*.
>
> *Harris*, 251.

5. Q.—Is it necessary to constitute the crime of *forgery*; (*a*) that there should be an intent to defraud any particular person; (*b*) that any person should be defrauded; (*c*) that any person should be in a situation to be defrauded?

A.—(*a*) It is not necessary to prove an intent to defraud any particular person; it will suffice to prove *generally* an intent to defraud. (*b*) Nor is it necessary that any person should be defrauded. (*c*) Nor that any person should be in a position to be defrauded.

Harris, 289.

6. Q.—If general evidence of good character be given for the prisoner on a criminal trial, in what different ways may it be met on the part of the Crown?

A.—By general evidence of bad character, but not by particular cases of misconduct. However for such purposes previous convictions may as a rule be proved.

Harris, 458.

PAPER IV.

1. Q.—What is the general rule as to the *burden of proof* on a criminal trial; and what qualifications are there of such rule?

A.—The burden of proof is on the prosecution as a rule, and they must prove their case before the prisoner is called upon for his defence; and this although the offence alleged consists of an act of omission and not of commission, and therefore the prosecution have to resort to negative evidence. But the rule is qualified. Thus by various Acts of Parliament it is declared penal to do certain things or possess certain articles without lawful excuse or authority; such excuse or authority must be proved by the accused.

E.g.—To possess public stores or coining tools.

Again it lies on the defendant to prove that signals to smuggling vessels were not made for the purpose of giving illegal notice; also to show some justification for sending an unseaworthy ship to sea. But N.B. that there is something to be proved by the prosecution in the first instance, either the possesion of the

goods, or the unseaworthiness of the ship. And in most cases of circumstantial evidence, there is a point at which the prosecutor has done all that he can reasonably be expected to do, and at which it is reasonable to ask for evidence from the prisoner in explanation, and to draw inferences unfavourable to him in its absence.

E.g.—The Court will expect an explanation from the prisoner of the object for which poison was purchased; so also in the case of recent possession of stolen goods. Killing is presumed to be murder until it is otherwise accounted for.

Harris, 454.

2. Q.—If a man break into a dwelling-house at night without any intent of committing a crime therein, what is the legal character of his act?

A.—Trespass.—(*Vide* answer to Q. 5, Paper I.)

3. Q.—On a trial for murder is it a good defence:

(*a*) That the deceased was in ill-health, and likely to die when the wound was given; (*b*) that the immediate cause of death was the refusal of the party to submit to an operation; (*c*) that the immediate cause of death was an improper application to the wound and not the wound itself?

A.—(*a*) No; (*b*) no; (*c*) yes.

Harris, 174.

4. Q.—Two persons conspire to commit a felony, and actually commit it. They are then tried for the conspiracy, and afterwards for the felony. Can they be convicted on both or either of such trials? (Cf. Q. 6, Paper II.)

A.—The purpose of the conspiracy being a *felony* and being *actually carried out*, the conspiracy is merged in the felony, so after a conviction for the felony the defendant cannot be tried for the conspiracy. But if the defendant is indicted for the conspiracy, he is not entitled to an acquittal because the facts shew a felony. Under such circumstances, however, he cannot be subsequently tried for the felony, unless the Court has discharged the jury from giving a verdict on the misdemeanour.

Harris, 138.

5. Q.—In what cases is it necessary for the Crown to call more than one witness to prove a criminal charge?

A.—(i.) In *treason* or misprision of treason (except where the overt act alleged is the assassination of the Queen, or any direct attempt against her life or person) two witnesses are required, unless the prisoner confesses. Both witnesses must testify to the same

overt act of treason, or one of them to one overt act and the other to an overt act of the same species of treason, but collateral facts may be proved by one witness.

(ii.) In perjury two witnesses are required, but it is not necessary that both should directly contradict what the accused has sworn; it is sufficient if the second corroborates in any material circumstance, by circumstantial evidence, or otherwise, what the first has said.

Harris, 441.

6. Q.—Define and distinguish *Champerty* and *Maintenance.*

A.—*Maintenance* is the officious intermeddling in a suit that in no way belongs to one, by maintaining or assisting either party with money or otherwise.

Champerty is a species of maintenance. The distinguishing feature is that the bargain is made with the plaintiff or the defendant *campum partire*, that is, in the event of success, to divide the land or other subject matter of the suit with the champertor in consideration of his carrying on the party's suit at his own expense.

Harris, 98.

PAPER V.

1. Q.—If, on the trial of a prisoner, for obtaining goods by *false pretences*, the evidence proves that the offence was *larceny*, what verdict may the jury give?

A.—Upon an indictment for a misdemeanour, if the facts given in evidence amount to a felony the prisoner is not on that account to be acquitted of the misdemeanour, unless the Court think fit to discharge the jury and to order the defendant to be indicted for the felony. Therefore upon an indictment for obtaining goods by false pretences, if the offence turns out to be larceny, the defendant is not on that account to be acquitted but may still be convicted of false pretences, and the jury may bring in a verdict to that effect. But before the verdict is given the Court may, if it think fit, discharge the jury and order the defendant to be indicted for the larceny.

Harris, 473.

2. Q.—What is the difference between *treason* and other crimes, as regards the element of *design*?

A.—In treason it is the designing that constitutes

the offence. But the design must be evidenced by some overt act, so that if there be wanting either the design or the overt act, as when the design has been formed, but laid aside before being put into execution, there is no treason. Conspirators meeting to consult on the means of killing the Sovereign will constitute a sufficient overt act to evidence the design.

Harris, 49.

In all other crimes there must be some carrying out, or attempt to carry out, the design into action.

Harris, 15.

3. Q.—Define and distinguish the crimes of *escape*, *prison breach*, and *rescue*?

A.—Escape is the liberation of the party effected either by himself or others *without force*.

Prison-breach or *prison-breaking* is the liberation of the party effected by himself without force. There must be an actual breaking, though it need not be intentional, to constitute this offence.

Rescue is the *forcibly* and *knowingly* freeing another from arrest or *imprisonment*.

Harris, 78 and 80.

4. Q.—If an indictment contains one count for a *felony*, and another count for a *misdemeanour*, is it

open to any objection on that ground? If so, how, and when, may the objection may be raised?

A.—If a count for a felony is joined with a count for a misdemeanour, the indictment will be held bad if demurred to, or judgment may be arrested if the verdict has been general, (*i.e.* "Guilty" or "Not Guilty," on the whole indictment) but not if the prisoner is convicted of the felony alone.

Harris, 367.

5. Q.—Give three examples of *killing* by *correction;* one which amounts to *murder*, another which amounts to *manslaughter*, and a third which amounts to *excusable homicide?*

A.—Killing by correction is:

(i.) *Murder*, when it is with a weapon likely to cause death.

E.g.—An iron bar.

(ii.) *Manslaughter*, when it is with an instrument not likely to kill, though improper for use in correction, or where the quantity of punishment exceeds the bounds of moderation.

(iii.) *Excusable*, when correcting in moderation a child, servant, scholar, or criminal entrusted to one's charge. The instrument of correction used being a proper one.

Harris, 182.

6. Q.—On a trial for murder, when the homicide has been proved, does the *onus* lie on the Crown to prove the *malice*, which is necessary to make it felonious, or on the prisoner to disprove it?

A.—If the mere fact of the homicide is proved the law *presumes* the malice which is necessary to make it felonious; and therefore it lies on the prisoner to disprove it by showing that it was either justifiable or excusable homicide.

Harris, 163.

PAPER VI.

1. Q.—Define accessory *before* the fact. What is the extent of his criminal responsibility?

A.—One, who being absent at the time when the felony is committed, yet procures, counsels, commands or abets another to commit a felony.

Harris, 35; Q 1, Paper XV.

The accessory will be answerable for all that ensues upon the execution of the unlawful act commanded, at least for all probable consequences. If the principal intentionally commits a crime essentially different from that commanded, the person commanding will not be answerable as accessory for what he did not command. But a mere difference in the mode of effecting the deed, or in some other collateral matter, will not divest the commander of the character of accessory if the felony is the same in substance.

Harris, 36.

2. Q.—A., a servant of B., received certain money on account of his master, which he entered in his master's books, charging himself, however, with it,

but did not pay it over, claiming a right to it. Discuss the offence, if any.

A. There is no offence on the part of A. The mere non-payment to B. of the money which A. has charged himself in his master's book with receiving is not embezzlement. But, on the other hand, it would have been no defence to an indictment for embezzlement to merely show that he had entered the receipt correctly in his master's book. If, however, A. in rendering his account admits the appropriation of the money, alleging a right in himself, no matter how unfounded, or setting up an excuse, no matter how frivolous, his offence in taking and keeping is no embezzlement. But where it was A.'s duty, at stated times, to account for and pay over to B. the money received during those intervals, his wilfully omitting to do so is embezzlement, and equivalent to a denial of the receipt of them.

3. Q.—What constructive breaking is sufficient to establish the crime of *burglary*?

A.—(*Vide* answers to Q. 3, Paper VIII.; and Q. 2. Paper IX.)

4. Q.—State accurately any statutory changes made in Canada, which have invaded the rule laid

down in criminal cases that the defendant is not a competent witness.

A.—Subsection 2 of section 6, chapter 157, R.S.C., being an Act respecting offences against Public Morals and Public Convenience provided that in every case arising under sections 3, 4 and 5 of said Act, the defendant shall be a competent witness in his own behalf upon any charge or complaint against him.

Subsection 3 of section 2, chapter 161, R.S.C., enacts that on an indictment for procuring a feigned or pretended marriage, the defendant shall be a competent witness in his own behalf.

Section 216 of chapter 174, R.S.C., provides that on the summary or other trial of any person upon any complaint, information or indictment, for common assault, or for assault and battery, or if another crime is charged but not proved, and the only case apparently made out is one of common assault or assault and battery, the defendant shall be a competent witness in his own behalf.

5. Q.—State briefly what the prosecution have to prove under an indictment for robbery in order to secure a conviction.

A. The *force* or *bodily* fear, which is the gist of the crime. It is not necessary, however, to show both

were present, one will suffice. The possession of the goods taken *from the person* or *in the presence* of the party robbed. A complete removal of the goods from the party robbed must also be proved, and also that the taking was against the will of the person robbed.

Harris, 240.

6. Q.—What is the effect of an acquittal of a prisoner upon technical grounds, as, for instance, a defect in the proceedings? What if acquitted on the ground of insanity?

A.—If he is acquitted on account of some defect in the proceedings, and not on the merits of the case, he may be detained and indicted afresh. If he is acquitted on the ground of insanity at the time of the commission of the offence, whether such offence was a felony or misdemeanour, he must be kept in custody until the Queen's pleasure be known; and the Queen may order his confinement during her pleasure.

Harris, 474.

PAPER VII.

1. Q.—If a man sees another man commit murder and keeps the fact a secret, is he guilty of any crime? If so, what?

A.—(*Vide* answer to Q. 1, Paper II.)

2. Q.—In what two different ways may a receiver of stolen goods be tried?

A.—Receivers, where the principal crime amounts to a felony at Common Law, or by the Larceny Act, may be tried in either of the two capacities:

(i.) As accessories after the fact.

(ii.) As committers of a distinct or substantive felony—and in this case, whether the principal has or has not been convicted, or even if he is not amenable to the Criminal Law.

Harris, 246.

3. Q.—Is a man who persuades another to commit suicide, guilty of any, and if so, of what crime?

A.—Yes. Murder.

4. Q.—What verdict ought the jury to render in the following cases:—(*a*) The prisoner is indicted for

larceny, but the evidence proves him guilty of *embezzlement*; (*b*) the prisoner is indicted for *obtaining goods by false pretences*, but the evidence proves him guilty of *larceny*?

A.—(*a*) A verdict of embezzlement.

Harris, 473.

(*b*) (*Vide* answer to Q. 1, Paper V.)

5. Q.—What is the short test by which to determine whether a prisoner is entitled to be acquitted on the plea of *autrefois acquit*?

A.—Whether the facts charged in the second indictment would, if true, have sustained the first.

Harris, 404.

6. Q.—Explain the distinction between *larceny* and *embezzlement*.

A.—(*Vide* answer to Q. 4, Paper III.)

7. Q.—What effect has the existence of an *insane delusion* on the criminal liability of the party entertaining it?

A.—The party entertaining it must be considered to be in the same situation as to responsibility as if the facts with respect to which the delusion exists were real.

E.g.—If under the influence of his delusion, he suppose another man to be in the act of attempt-

ing to take away his life, and he kills that man, as he supposes in self defence, he would be exempt from punishment. If, however, his delusion was that the deceased had inflicted a dangerous injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment. Notwithstanding the party accused, did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable if he knew at the time of committing such crime that he was acting contrary to the law of the land.

Harris, 22.

PAPER VIII.

1. Q.—What is the law as to the necessity for proof of the finding of the body on a trial for murder?

A.—As a general rule proof is required of the finding of the body of the deceased. But this rule is not inflexible, as where direct evidence is brought before the jury which is sufficiently strong to satisfy them that a murder has really been committed.

Harris, 174.

2. Q.—What is *misprision of treason*, and how has the Common Law been altered in regard to the offence now known by that name?

A.—Misprision of treason consists in the bare knowledge and concealment of treason, any degree of assent making the party a principal. At Common Law, this mere concealment, being construed as aiding and abetting, was regarded as treason, as there is no distinction into principals and accessories in treason. But it was specially enacted that a bare concealment of treason should be held misprision only.

Harris, 54.

3. Q.—Give an example of *constructive breaking* sufficient to constitute *burglary*.

A.—The breaking is constructive where admission is gained by some device, there being no actual breaking.

E.g.—To knock at the door and then rush in under pretence of taking lodgings, and fall on and rob the landlord; or to procure a constable to gain admittance in order to search for traitors and then to bind the constable and rob the house; or if the servants conspire with a robber and let him into the house at night.

Harris, 274.

4. Q.—In what different ways, and at what stages of the case respectively, may objections to the sufficiency of an indictment be raised?

A.—If any essential ingredient of the offence is omitted or not stated with sufficient certainty, the defendant may move to quash the indictment, or may demur, or if the defect is one which is not cured by the verdict he may move in arrest of judgment, or bring a writ of error. Such motion must be made *after* the verdict and *before* judgment is given. All objections to formal defects must be taken before the jury are sworn, and they may then be amended by the Court.

Harris, 363.

5. Q.—Is it a good defence to a charge of murder (*a*) that the deceased was in ill-health and likely to die when the wound was given; (*b*) that the immediate cause of death was neglect on the part of the doctor; (*c*) that the immediate cause of death was the refusal of the party to submit to an operation. (*Vide* Q, 3, Paper IV.)

A.—(*a*) No; (*b*) no; (*c*) no.

Harris, 174.

6. Q.—On the trial of a charge of obtaining money by false pretences, will evidence be admitted: (*a*) to prove that, *before* the offence in question, the accused had obtained money by a similar false pretence; (*b*) that, *after* the offence in question, he obtained money from some other person by the same pretence? If any such evidence is admissible, for what purpose?

A.—In the former case such evidence is admissible and is given to prove the *intent* to defraud; in the latter case the evidence is not admissible.

Harris, 265.

PAPER IX.

1. Q.—What is the gist of the crime of *conspiracy?*

A.—The *combination;* conspiracy being the combination of two or more persons to do an unlawful act, whether that act be the final object of the combination, or only a means to the final end. And whether that act be a crime or an act hurtful to the public, a class of persons or an individual.

Harris, 134.

2. Q.—Give an example of a *constructive breaking* sufficient to constitute *burglary?*

A.—(*Vide* answer to Q. 3, Paper VIII.)

3. Q.—What is the rule as to including two or more offences in one count of an indictment; and what exceptions are there to the rule?

A.—As a rule more than one offence cannot be charged in the same count. This is commonly expressed by saying that a count must not be *double* or is *bad for duplicity.* Thus one count cannot charge a prisoner with having committed a murder and a robbery. There are however two exceptions to the rule.

(i.) An indictment for *burglary* usually charges the defendant with having broken and entered the house *with intent to commit* a felony, and also with *having committed* the felony intended.

(ii.) And in indictments for *embezzlement* by clerks or servants, or persons employed in the public service, or in the police, the prosecution may charge any number of distinct acts of embezzlement, not exceeding three, which may have been committed against the same master within six months, inclusive. But even in this latter case it is usual to charge the different acts in different counts.

Harris, 366.

4. Q.—Enumerate the cases in which an officer may lawfully kill a person charged with crime.

A.—(i.) Where the proper officer executes a criminal in strict conformity with his legal sentence.

(ii.) When an officer of justice, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it.

(*a*) When an officer or his assistant, in the due execution of his office, whether in a civil or criminal case kills one who is resisting his arrest or attempt to arrest.

(*b*) When the prisoners in gaol or going to gaol assault the gaoler or officer, and he in his defence, to prevent an escape, kills any of them.

(*c*) When an officer, having legal authority to arrest, attempts to do so, and the other flies and is killed in the pursuit.

N.B.—Here the ground of arrest must be either a *felony* or the *infliction of a dangerous wound*.

(*d*) When an officer in endeavouring to disperse the mob in a riot or rebellious assembly, kills one or more of them, he not being able otherwise to suppress the riot.

In all these cases it must be shewn that the killing was apparently a necessity.

Harris, 163.

5. Q.—Are the following good defences to a charge of bigamy: (*a*) that the second marriage would have been void in any case for consanguinity; (*b*) that, at the time of the first marriage, the wife had a husband living, but who had been continually absent from her for more than seven years, and not known by her to be living within that time; (*c*) that at the time of the second marriage the prisoner *bona fide* believed his wife to be dead? (*Vide* Q. 4, Paper I.)

A.—(*a*) No; (*b*) yes; (*c*) no.

Harris, 140.

6. Q.—Define the crime of *riot*, and distinguish it from an *affray*.

A.—(*Vide* answer to Q. 3, Paper III., for definition of a riot.)

An *affray* is a fighting between *two* or more persons in some public place, to the terror of Her Majesty's subjects.

E.g.—A prize fight, (if it takes place in private it will be an assault.) It differs from a *riot* inasmuch as there must be *three* persons to constitute the latter and also in the latter not being premeditated.

Harris, 111.

PAPER X.

1. Q.—Explain the nature and effect of the different presumptions as to the criminal capacity of infants of different ages.

A.—Infancy can be used in defence only as evidence of the absence of criminal intention, though there are certain presumptions of the law on the subject, some of which may, some of which may not, be rebutted. The age of discretion, and therefore responsibility, varies according to the nature of the crime. What the law technically terms "infancy" does not terminate till the age of twenty-one is reached; but this is not the "infancy" which is the criterion in the criminal law. Two other ages have been fixed as points with reference to which the criminality of an act is to be considered. Under the age of *seven* an infant cannot be convicted of a felony; for until he reaches that age he is considered *doli incapax;* and this presumption cannot be rebutted by the clearest evidence of a mischievous discretion. Between *seven* and *fourteen* he is still considered *doli incapax;* but this presumption may be rebutted by clear and strong

evidence of such mischievous discretion, the principle of the law being *malitia supplet aetatem*. But there is one exception to this rule, grounded on presumed physical reasons. A boy under fourteen cannot be convicted of rape, or similar offences, even though he has arrived at the full state of puberty. Between *fourteen* and *twenty-one*, an infant is presumed to be *doli capax*, and accordingly as a rule may be convicted of any crime, felony or misdemeanour. But this rule is also subject to exceptions.

E.g.—In offences consisting of mere non-feasance, as allowing felons to escape, &c.

Harris, 26.

In certain cases the law deals with juvenile offenders in an exceptional way, in order, if possible, to prevent their becoming confirmed criminals.

R. S. C., ch. 177.

2. Q.—What constitutes *misprision of felony*? Explain by an example.

See Q. 1, Paper II.; Q. 1, Paper VII. and answers thereto.

3. Q.—Give instances of a man killing another by fighting: one in which the killing is *murder*; another in which it is *manslaughter*; and another in which it is *excusable homicide*.

A.—*Murder*—Deliberately fighting a duel—or after time for cooling—or under any other circumstances indicating deliberate ill-will.

Manslaughter—In a sudden quarrel where the parties immediately fight—or where the parties are fighting in an unlawful amusement.

Excusable homicide—In a sparring match with gloves, or other lawful amusement, fairly conducted in a private room.

Harris, 182.

4. Q.—State accurately the rule of the criminal law in reference to the evidence of an accomplice.

See Q. 6, Paper XIII. and answer thereto.

5. Q.—What is the difference between a challenge to the *array*, and a challenge to the *polls*, on a criminal trial?

A.—The challenge to the array is an objection to the whole body of jurors returned by the sheriff, not on account of their individual defects, but for some partiality or default in the sheriff or his under officer who arrayed the pannel. The challenge to the polls is where particular individuals are objected to, on account of some defect, personal objection, bias or conviction for an infamous crime.

Harris, 415.

6. Q.—What is the rule as to charging a prisoner with distinct felonies on different counts of the same indictments, and what exceptions are there to the rule?

A.—In *practice* the rule is that different felonies shall not be charged against a prisoner on different counts, as this course would embarass him in his defence. There are certain exceptions to this rule. In an indictment for feloniously stealing any property, a count or several counts for feloniously receiving the *same* property knowing it to have been stolen, and *vice versa*, may be added; also in an indictment for larceny, it is lawful to insert several counts against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and to proceed thereon for all or any of them.

Harris, 367.

There is a similar rule with regard to embezzlement.

Harris, 366.

PAPER XI.

1. Q.—Explain what is meant by *involuntary* manslaughter.

A.—When the death, not being intended, is caused in the commission of an unlawful act, it is termed involuntary manslaughter. By this is meant that the unlawfulness of the act in which the accused is engaged is the ground of the homicide being regarded as manslaughter, and not homicide by misadventure merely. By "unlawful" here must be understood what is *malum in se* and not what is merely *mala quia prohibitum*. Thus, then, if a man shooting at game by accident kills another, it is homicide by misadventure only, even although the party is not qualified. It is immaterial whether the unlawfulness is in the act itself or in the mode in which it is carried out. If the unlawful act is a felony, the homicide amounts to murder. One form of doing an act in an unlawful manner is *negligence*. This consideration very frequently presents itself in manslaughter. It may be said generally that whatever constitutes murder when done by fixed design, constitutes manslaughter when it arises from culpable negligence.

Harris, 179.

2. Q.—What statutory change has been made in the common law mode of trying *accessories?*

A.—Formerly accessories before the fact could not be tried without their own consent, except at the same time with the principal, or after the principal had been tried and found guilty. They were merely accessories, and therefore they could not be tried before the fact of the crime was established.

Harris, 36.

Now two courses are open to the prosecution: either (*a*) to proceed against the person who counsels, &c., as an accessory before the fact to the principal felony together with the principal felon, or after the conviction of the principal felon; or (*b*) to indict the counsellor for a substantive felony, whether the principal felon has or has not been convicted, or is or is not amenable to justice. (R.S.C., c. 145, s. 2.) And section 1 also provides that an accessory before the fact to any felony may be indicted, tried, convicted and punished in all respects as if he were a principal felon.

Accessories after the fact may be tried in the same manner as accessories before the fact; that is, either as an accessory after the fact with the principal felon,

or after his conviction, or as for a substantive felony, independently of the principal felon. (R.S.C., c. 145, s. 4.)

3. Q.—Define the crime of *embracery*.

A.—Embracery is an attempt to influence a jury corruptly to give a verdict in favour of one side or party, by promises, persuasions, entreaties, money, entertainments and the like.

Harris, 96.

4. Q.—On a trial of A. for the murder of B. will evidence be received to prove that on a former occasion A. attempted to murder B.? Reasons.

A.—Yes; to prove *malice* or *intent* on the part of A.

Harris, 458.

5. Q.—What are the three classes of acts which the crime of *treason* comprises?

A.—(i.) Execution or contrivance of acts of violence against the person of the sovereign.

(ii.) Acts of treachery against the State in favour of a foreign enemy.

(iii.) Acts of violence against the internal government of the country.

Harris, 47.

In addition to these branches the law includes a few acts which are of the rarest occurrence, and at the present day hardly demand any notice.

6. Q.—What facts are necessary to make a *finder* of goods guilty of *larceny?*

A.—The true rule as to the appropriation of things found amounting to an unlawful and felonious taking, was laid down in *R. v Thorburn* [18 L. J. (M. C.) 140.] "If a man find goods that have been actually lost, "and appropriate them, with intent to take the "entire dominion over them, really believing when "he takes them that the owner cannot be found, it is "not larceny. But if he take them with the like "intent, though lost, or reasonably supposed to be "lost, but reasonably believing that the owner can be "found, it is larceny." Thus to make the finder guilty of larceny, he must have both this belief and this intention at the *time of the finding.*

Harris, 232.

PAPER XI.

1. Q.—Can a person ever be convicted of larceny for stealing his own goods? If so, when?

A.—Yes; if they are in the hands of a bailee, and the taking of them has the effect of charging the bailee.

Harris, 231.

2. Q.—A. is standing on the middle of a bridge over a river. B. at one end of the bridge points a loaded gun at A. with intent to shoot him; A. knowing B. to be his deadly enemy, and believing that B. will shoot him, and having no other way of escape, jumps into the river and is drowned. Is B. guilty of any crime, and if so, what?

A.—Yes; murder. It is perfectly immaterial what may be the form of death. Any act, the probable consequence of which may be, and eventually is, death, is murder, though no stroke be struck, and even though the killing be not primarily intended.

Harris, 173.

3. Q.—What is the difference between a constable

and a private person, in regard to the right to arrest another without a warrant, on suspicion of felony?

A.—The constable is not liable to an action for false imprisonment, although no crime has been committed, if there were reasonable grounds for suspicion. But a private person arrests at his peril, and is liable to the consequences of false imprisonment, unless he can afterwards prove that a felony has actually been committed by some one, and that there was reasonable ground to suspect the person apprehended.

Harris, 348.

4. Q.—In a case of bigamy, what effect will be produced on the liability of the accused to a conviction by (*a*) proof that the first marriage was void on account of consanguinity, or other like cause; (*b*) proof that the second marriage would have been void for a similar reason? (*Cf.* Q. 4, Paper I; Q. 5, Paper IX.)

A.—(*a*) The accused will not be liable to be convicted; (*b*) it will have no effect on the liability of the accused to a conviction.

Harris, 140.

5. Q.—What is the true test to determine whether,

in any particular case, an acquittal on a prior indictment is a bar to a subsequent indictment under the plea of *autrefois acquit*? (*Cf.* Q. 5, Paper VII.)

A.—Whether the facts charged in the second indictment would, if true, have sustained the first.

Harris, 404.

6. Q.—State whether or not the following offences, committed in the night, will or will not constitute *burglary*:—(*a*) The thief gains admission through the outer door being open, and then breaks open the door of a room for the purpose of plundering; (*b*) the thief gains admission by raising a window, already partly open, and plunders the house, without breaking any inner door; (*c*) the thief is a servant who is lawfully in the house, but breaks the door of a room in order to steal; (*d*) a servant, lawfully in the house, breaks open the sideboard to steal the plate out of it.

A.—(*a*) Yes; (*b*) no; (*c*); yes; (*d*) no.

Harris, 274.

7. Q.—Two persons agree to commit suicide together, one escapes, and the other dies. Is the former guilty of any offence, and if so, what?

A.—Yes; murder, though it is extremely doubtful whether he would be executed.

Harris, 170.

PAPER XIII.

1. Q.—What is the difference in effect between a verdict of *not guilty* and an *arrest of judgment?*

A.—If a verdict of acquittal is returned, the prisoner is forever free from the present accusation, and he is discharged in due course, unless there is some other charge against him.

Harris, 474.

If judgment is arrested, the proceedings are set aside, no judgment is given, and the prisoner is discharged. But unlike an ordinary acquittal, the defendant may be indicted again on the same facts.

Harris, 477.

2. Q.—What is the *gist* of the crime of *piracy?*

A.—The place where it is committed, viz: the *high seas*, and within the jurisdiction of the Admiralty.

Harris, 43.

3. Q.—When a prisoner, on a criminal trial, gives general evidence of *good character*, how may such evidence be met by the Crown?

A.—(*Vide* answer to Q. 6, Paper III.)

4. Q.—For what purposes, and at what stages of the trial, respectively, is evidence of *prior convictions* of the accused, admissible against him in a criminal case?

A.—The allowing evidence of a previous conviction to be given during the course of a criminal trial, so that it may affect the minds of the jury, is an exception to the usual policy and practice of our criminal law. As a rule, the only influence which a previous conviction is allowed to exert is, after a verdict has been given, on the judge in determining the sentence.

Harris, 247.

In certain cases, if the prisoner has been previously convicted, he is asked if he has been so previously convicted, the previous conviction being also alleged in the indictment. If he admits it the Court proceeds to sentence him; but if he denies it, or will not answer, the jury are then, without being again sworn, charged to inquire concerning such previous conviction, the point to be established being the identification of the accused with the person so convicted, before the severer punishment consequent on a previous conviction is awarded. These cases are indictments for: (*a*) felonies (not misdemeanours) men-

tioned in the Larceny Act; or (*b*) for offences under the Coinage Act, provided the previous conviction be for some offence against that or some other Coinage Act.

Harris, 368.

The only case in which evidence of a previous conviction may be given before the subsequent conviction is found is when the prisoner gives evidence of character. In this case the jury are to enquire of the previous conviction and the subsequent offence at the same time.

Harris, 475.

And again when proceedings are taken against a person for *receiving* or having in possession stolen goods, evidence may be given at any stage of the proceedings, of his previovs conviction within five years of any offence involving fraud or dishonesty. But in this last case seven days' notice in writing must be given to the accused that proof is intended to be given of such previous conviction.

Harris, 247.

(And see Q. 4, Paper XX.)

5. Q.—A. wrongfully enters B.'s field, and takes therefrom B.'s horse, intending at the same time to

return it after taking a ride. A., however, changes his mind, decides not to return the horse, and fraudulently appropriates it. Is he guilty of larceny? Reasons.

A.—Yes. If the possession is obtained by trespass, and there is a subsequent fraudulent appropriation, though there was no fraudulent intention at first, it is larceny. For all felony includes trespass, and every indictment of larceny must have the words *"felonice cepit"* as well as *"asportavit,"* whence it follows that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away.

Harris, 228.

6. Q.—State accurately the rule of the criminal law in regard to the evidence of an *accomplice*?

A.—In practice, though not in strict law, it is deemed essential that the evidence of the accomplice should be corroborated in some material part by other evidence, so that the jury may be led to presume that he has spoken the truth generally. This confirmatory evidence must be unimpeachable, and should not be merely to the fact of the act having been committed, but should extend to the identification of the prisoner with the party concerned.

Harris, 441.

PAPER XIV.

1. Q.—Will the following acts constitute *forgery*: (*a*) To paint an artist's name in the corner of a picture, in order to pass it off as an original picture by that artist; (*b*) to sign a note in the name of a fictitious person; (*c*) for a man to make a false deed in his own name? Reasons.

A.—No; for the forgery must be of some *document* or *writing* (*b*) yes; (*c*) yes; as when a person has made a conveyance in fee of land to A., and *afterwards* make a lease for 999 years of the same land to B., of a *date prior* to that of the conveyance to A., for the purpose of defrauding A. In (*b*) and (*c*) the the forgery is of a writing and document.

Harris, 287.

2. Q.—Could a man be convicted of *larceny* at common law if he had no felonious intent at the time he took the goods? If so, under what circumstances?

A.—Yes; for one case see answer to Q. 5, Paper XIII.

And also in the case of a servant who has merely the care and custody of the goods of his master, and appropriated them, as the felonious intention need not appear at the time of delivery.

Harris, 229.

3. Q.—Show how the killing of one man by another unintentionally, whilst doing another act, may be *murder*, *manslaughter*, or *excusable homicide*, according to circumstances.

A.—Killing, without intending to kill, whilst doing another act, may be:

Murder, if that other act is a felony;

Manslaughter, if that other act is unlawful, *i.e. malum in se;*

Excusable, if that other act is lawful, that is, not *malum in se.*

And if the act is a lawful but dangerous one; *e.g.*, driving, the killing may be:

Murder, if the driver perceives the probability of the mischief, and yet proceeds with his act;

Manslaughter, if he might have seen the danger if, as he ought to have done, he had looked before him, or if, though he previously gave warning, this warning was not likely to prove entirely effectual, *e.g.* driving in a crowded street;

Excusable, if he uses such a degree of caution, as to make it improbable that any danger or injury will arise to others.

Harris, 183.

4. Q.—What is the most intelligible distinction between *larceny* and obtaining property by *false pretences*; and in cases of doubt, which crime is it better to charge in the indictment, and why?

A.—In larceny the owner of the thing stolen *has no intention* of parting with his property therein to the person taking it, although he may intend to part with the possession; in false pretences the owner *does intend* to part with his property in the money or chattels but it is obtained from him by fraud. The line between the two crimes is very narrow. The difficulty of discriminating arises chiefly where there has been a constructive taking only where the owner delivers the property, though the possession is obtained by fraud. The evil which might arise from this state of things is to some extent obviated by a provision that if upon an indictment for false pretences it is proved that the defendant obtained the property in such a manner as to amount in law to larceny, he is not on that account to be acquitted.

Therefore in cases of doubt it is better to indict for false pretenses.

Harris, 261; (and see Q. 7, Paper II.)

5. Q.—Mention and explain the different kinds of *challenge* to which a prisoner is entitled on a criminal trial?

A.—Challenges are of two kinds:

1. *For cause.*

(i.) *To the array*, when exception is taken to the whole pannel, not on account of their individual defects, but for some partiality or default in the sheriff, or his under officer, who arrayed the pannel.

(*a*) *Principal challenge;* founded on some manifest partiality, or on some error on the part of the sheriff.

(*b*) *Challenge for favor;* where the ground of partiality is less apparent and direct.

(ii.) *To the polls;* when particular individuals are objected to.

(*a*) *Principal challenge;*

(1) *Propter honoris respectum*, where a peer or lord of parliament is sworn on a jury for the trial of a commoner.

(2) *Propter defectum*, on account of some personal objection, as alienage, infancy, old age, or a want of the requisite qualification.

(3) *Propter affectum*, where there is supposed to be a bias or prospect of partiality, or when an actual partiality is manifested.

(4) *Propter delictum*, if a person has been convicted of an infamous crime.

(*b*) *Challenge for favor*, when there is reasonable ground for suspicion, but not sufficient ground for a principal challenge *propter affectum*.

2. *Peremptory challenges.* In felonies, the prisoner is allowed to arbitrarily challenge, and so exclude a certain number of jurors, without showing any cause at all. He cannot claim this right in misdemeanours, but it is usual, on application to the proper officer, for him to abstain from calling any name objected to by the defendant (or prosecution) within reasonable limits. The defendant may peremptorily challenge thirty-five in treason, excepting a direct attempt against the Queen's life, and in that case, in murder and all other felonies, he may peremptorily challenge twenty. Challenges made above those numbers are void.

Harris, 414 to 418.

PAPER XV.

1. Q.—Define an *accessory before the fact.*

A.—One, who *being absent* at the time when the felony is committed, yet procures, counsels, commands or abets another to commit a felony.

Harris, 35; Q. 1, Paper VI.

N.B.—An accessory is absent at the time of the performance of the offence.

2. Q.—What is an *affray*, and how does it differ from an *assault*, and from a *riot*?

A.—An affray is a fighting between two or more persons in some public place, to the terror of Her Majesty's subjects; for example, a prize fight. If it takes place in *private* it will be an *assault.*

Harris, 111.

But an *assault* is also an *attempt* or *offer* to commit a forcible crime against the person of another; for example, presenting a loaded gun at a person. It will be noticed that there need not be an actual touching of the person assaulted.

Harris, 201.

See answer to Q. 6, Paper IX, as to the difference between an affray and a riot.

3. Q.—If a man be tried for *murder*, and acquitted, can he be afterwards convicted of *manslaughter* upon the same facts? Why?

A.—No; because on the indictment for the graver offence, which includes in it the offence of minor extent of the same class, he might have been convicted of the latter, if there had been sufficient proof.

Harris, 474.

4. Q.—For what different purposes may evidence of a prior conviction be given against a prisoner on a criminal trial?

A.—The allowing evidence of a previous conviction to be given during the course of a criminal trial, so that it may affect the minds of a jury, is an exception to the usual policy and practice of our criminal law. As a rule, the only influence which a previous conviction is allowed to exert is, after a verdict has been given, on the judge in determining the sentence.

Harris, 247.

In certain cases, if the prisoner has been *previously convicted*, he is asked if he has been so previously convicted; the previous conviction being also alleged in

the indictment. If he admits it, the court proceeds to sentence him. But if he denies it, or will not answer, the jury are then, without being again sworn, charged to inquire concerning such previous conviction; the point to be established being the identification of the accused with the person so convicted, before the severer punishment consequent on a previous conviction is awarded. These cases are indictments for (*a*) felonies (not misdemeanours) mentioned in the Larceny Act, or (*b*) for offences under the Coinage Act, provided that the previous conviction be for some offence against that or some other Coinage Act.

Harris, 368.

The only case in which evidence of a previous conviction may be given before the subsequent conviction is found, is when the prisoner gives evidence of character. In this case, the jury are to inquire of the previous conviction, and the subsequent offence at the same time.

Harris, 475.

And again, when proceedings are taken against a person for *receiving* or having in his possession stolen goods, evidence may be given at any stage of the proceedings of his previous conviction within five years

of any offence involving fraud or dishonesty. But in this last case seven days' notice in writing must be given to the accused that proof is intended to be given of such previous conviction.

Harris, 247 ; (and see Q. 4, Paper XIII.)

5. Q.—Distinguish *robbery* from *larceny*.

A.—(See Q. 2, Paper 1, and answer thereto.)

6. Q.—Shew in what way *intent* is a more important element in *treason* than it is in *murder*.

A. In the former crime, it is the intent which constitutes the offence ; while in the latter, there must be some attempt in addition to the intent to commit the crime.

Harris, 49 ; (and see answer to Q. 2, Paper V.

PAPER XVI.

1. Q.—Are the directors of a railway company liable for any, and what, criminal offence, if, owing to the fact of the permanent way being left, through negligence, out of repair, an accident happens, causing death? Give your reasons.

A.—If it could be shewn that the want of repair was the necessary consequence of the negligence of the directors, they would be guilty of manslaughter; but they would not be subject to any criminal liability if the deaths were caused through the negligence of workmen or others in the employment of the company.

2. Q.—Describe the proceedings at the trial of a prisoner on an indictment.

A.—The proceedings commence with the arraignment of the prisoner. Assuming that on arraignment he pleads "not guilty," the petty jury are thereupon sworn (subject to the prisoner's right of challenge), and he is given in charge to them. The counsel for the prosecution then opens his case to the jury, stating

the principal facts to be proved, and calls and examines his witnesses, who may be cross-examined by the prisoner's counsel, and re-examined by counsel for the prosecution on facts referred to in the cross-examination. On the close of the case for the prosecution, if the prisoner has witnesses, his counsel opens his case to the jury, calls and examines his witnesses, who may be cross-examined and re-examined, and then sums up his evidence, and the counsel for the prosecution replies on the whole case. But if no witnesses are called by the prisoner, the counsel for the prosecution addresses the jury for the second time at the close of the case for the prosecution, after which the prisoner's counsel addresses the jury. The judge then sums up, and the jury give their verdict, after which (if they find the prisoner guilty) sentence is passed; the prisoner (in cases of treason and felony) being usually asked, before sentence, if he has anything to say why sentence should not be passed on him. If there is any ground for moving in arrest of judgment, the motion must be made after verdict and before sentence is passed.

Harris, 396; *Ch.* XII.

3. Q.—Mention any rules of evidence specially applicable in criminal cases.

A.—The prisoner is presumed to be innocent till the contrary is proved; he is not to be convicted on the uncorroborated evidence of an accomplice; a confession made by him is admissible in evidence, provided it was free and voluntary; neither the prisoner nor his or her wife or husband can be a witness; a dying declaration made by a person as to the cause of his death is admissible in evidence on a trial for the murder or manslaughter of such person; evidence as to the prisoner's character is admissible under certain conditions.

Harris, Ch. 17.

4. Q.—Give examples of *justifiable* and *excusable* homicide, respectively.

A.—(See answer to Q. 1, Paper I.)

5. Q.—Under what circumstances may a man finding *lost* goods and appropriating them to his own use, be indicted for larceny?

A.—(See and *Cf.* Q. 6, Paper XI, and answer thereto.)

6. Q.—A., a police officer, having a warrant for the arrest of B., on a charge amounting to misdemeanour, meets him on the highway. B. resists arrest and runs away, and in the pursuit A. fires his pistol after B. and kills him. Is A. liable to indictment for any, and if any, what offence?

A.—Yes; murder, as B. is charged with a misdemeanour only, and the killing is occasioned by means likely to kill.

Harris, 165.

PAPER XVII.

1. Q.—Distinguish *burglary* from *house-breaking.*

A.—(*Vide* Q. 7, Paper II., and answer thereto.)

2. Q.—On a trial for murder on whom does the burden of proof lie as to the question of malice aforethought? Why?

(*Cf.* Q. 6, Paper V.)

A.—On the accused, because on the mere fact of the homicide being proved, the law presumes the malice which is necessary to make it felonious; and, therefore, it lies on him to prove that it was justifiable or excusable.

Harris, 163.

3. Q.—Distinguish *riot* from *unlawful assembly.*

A.—A *riot* (Q. 2, Paper III.) is the outcome of an *unlawful assembly* which is any meeting of three or more persons under such circumstances of alarm, either from the large numbers, the mode or time of the assembly, &c., as, in the opinion of firm and rational men, are likely to endanger the peace, there being no aggressive act actually done. It is the first step to the graver crime of riot.

E.g.—A hundred men armed with sticks meet together at night to consult about the destruction of a fence which their landlord has erected; this is an unlawful assembly. They march out together from the place of meeting in the direction of the fence; this amounts to a rout, the intermediate step between an unlawful assembly and a riot. They arrive at the fence and, amid great confusion, violently pull it down; this is a riot.

Harris, 108, 109.

4. Q.—What is the present doctrine of our criminal law as to insanity forming a defence to an indictment for murder?

A.—To establish a defence on the ground of insanity it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. Thus the question of knowledge of right or wrong, instead of being put generally and indefinitely, is put in reference to the *particular act* at the *particular time* of committing it.

Harris, 22.

The insanity must have been of such a kind as entirely to deprive the prisoner of the use of reason *as applied to the act in question*, and of the knowledge that he was doing wrong in committing it.

Alison's Principles of Crim. L. in Scotland, 645, 654.

5. Q.—Under what circumstances may a *dying declaration* not made upon oath be received in evidence on a criminal trial?

A.—Only when the death of the deceased is the subject of the charge, (that is, in case of murder or manslaughter), and then only if the declaration refers to the injury which was the cause of the death, and it appears to the satisfaction of the judge, that the deceased was conscious of being in a dying state at the time he made the declaration.

Harris, 461.

PAPER XVIII.

1. Q.—Define the crime of *conspiracy*, and distinguish the three classes into which the crime is divided.

A.—Conspiracy is a combination of two or more persons to do an unlawful act, whether that act be the final object of the combination or only a means to the final end; and whether that act be a crime or an act hurtful to the public, a class of persons or an individual.

Three classes may be distinguished:

1. When the end to be accomplished would be a *crime* in each of the conspiring parties; in other words, a conspiracy to commit a crime.

2. When the ultimate purpose of the conspiracy is lawful, but the means to be resorted to are criminal, or, at the least, illegal; in other words, to effect a legal purpose with a corrupt intent or by improper means.

3. Where the object is to do an injury to a third party or a class; though if the wrong were inflicted by a single individual, it would be a wrong and not a crime.

Harris, 134.

2. Q.—Mention all the cases you can in which a prisoner may be convicted of a crime not charged in the indictment.

A.—(See Q. 5, Paper II., and answer thereto.)

3. Q.—Define and distinguish principal in the first degree, principal in the second degree, accessory before the fact, and accessory after the fact.

A.—*Principal in the first degree.*—He who is the actor or actual perpetrator of the deed. He need not be actually present when the offence is consummated, nor need the deed be done by his own hands.

Principal in the second degree.—One who is present aiding and abetting at the commission of the deed. This presence need not be actual; it will be sufficient if the party has the intention of giving assistance, and is near enough to give the assistance. There must be both a participation in the act and a community of purpose (which must be an unlawful one) at the time of the commission of the crime. So that mere presence or mere neglect to prevent a felony will not make a man a principal; and acts done by one of the party, but not in pursuance of the arrangement, will not render the others liable.

The distinction between principals in the first and second degree is not a very material one, as the punishment of each is generally the same.

Accessory before the fact.—One who being absent at the time when the felony is committed, yet procures, counsels, commands, or abets another to commit a felony. This may be done not only by direct command or counsel, but also by expressing assent or approbation of the felonious design of another.

Accessory after the fact.—One who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon.

For a case in which examples of each of the four kinds of participation in a crime will be found see Q. 3, Paper I.

4. Q.—Explain what is meant by seditious libel.

A.—Seditious libels are such political writings or words as do not amount to treason, but which are not innocent. They should have a plain tendency to produce public mischief by perverting the mind of the subject and creating a general dissatisfaction towards government.

Harris, 57.

5. Q.—Distinguish *manslaughter* from *homicide se defendendo.*

A.—In the latter, the ground for the blow, etc., is the necessity to take such a step for self-preservation; the slayer could not escape if he would, and has done all that he can to avoid the struggle or its continuation.

In the former, the necessity does not exist, but its place is taken by a sudden accession of ill-will. The slayer would not escape if he could, and the killing is done in the actual combat.

Harris, 168, 179.

6. Q.—Explain the meaning of *misprision of felony?*

A.—(See Q. 1, Paper II.; Q. 1, Paper VII.; Q. 2, Paper VIII.; Q. 2, Paper X.)

PAPER XIX.

1. Q.—Define *unlawful assembly* and *riot.*

A.—An *unlawful assembly* is the meeting together of three or more persons with such accompanying circumstances as are likely to inspire people with terror; there being, however, no aggressive act actually done.

Harris, 108.

For *riot* see answer to Q. 2, Paper III, and see also Q. 3, Paper XVII.

2. Q.—Define *robbery* and *house-breaking.*

A.—*Robbery* is the felonious and forcible taking from the person of another, or in his presence against his will, of any money or goods to any value, by violence or putting him to fear.

House-breaking is the breaking and entering a dwelling-house, school-house, shop, warehouse or counting-house, and committing a felony therein, or, being therein, committing a felony and breaking out (where such offence does not amount to a burglary);

or breaking and entering a dwelling-house, church, chapel, meeting-house, or other place of divine worship, or any building within the curtilage, school-house, shop, warehouse, or counting-house, with intent to commit any felony therein, although such felony shall not in fact have been effected.

R. S. C., c. 146, ss. 40, 41; *Harris*, 277.

3. Q.—Distinguish between *larceny*, *embezzlement* and obtaining by *false pretences*.

A.—*Larceny* is the taking and carrying away a chattel out of the possession of another, with a felonious intent to appropriate it without the owner's consent. *Embezzlement* is the felonious conversion by a clerk or servant to his own use of property received by him on account of his employer, such property not being in the actual or legal possession of the employer. Obtaining by *false pretences*, differs from larceny in that the owner intends (though the intention is produced by fraud), to part with his property in the money, and not merely with the possession of it; whereas in larceny he has no intention to part with the property, though he may intend to part with the possession.

(And see answer to Q. 7, Paper II.; Q. 4, Paper III.; Q. 6, Paper VII.)

4. Q.—Define *manslaughter* as distinguished from *murder.*

A.—*Manslaughter* is unlawful homicide *without* malice aforethought, either express or implied; the distinction between this offence and *murder* being that the latter is unlawful homicide *with* malice.

5. Q.—Under what circumstances is it proper to receive in evidence on a criminal trial: (1) the confession of the accused; (2) the dying declaration of a deceased person?

A.—(1) Only where the confession was free and voluntary. What amounts to a free and voluntary confession is not quite clear; but it seems that a confession will usually be admissible, unless it has been made in consequence of some inducement of a temporal nature having reference to the charge against the prisoner, held out by a person having authority over him in connection with the charge, as, a magistrate, a constable, the prosecutor, or the prisoner's master.

Harris, 399.

(2) Only when the death of the deceased is the subject of the charge, (that is, in a case of murder or manslaughter); and then only if the declaration refers to the injury which was the cause of the death,

and it appears to the satisfaction of the judge that the deceased was conscious of being in a dying state at the time he made the declaration.

Harris, 40; (Q. 5, Paper XVII.)

6. Q.—Can a person under any and what circumstances be found guilty of murder who did not intend to commit same, or do injury to any human being?

A. If a person, while committing a felonious act, accidentally kills another, he is legally guilty of murder, even though he had no design to kill or do injury to a human being; as where a person shooting at a fowl, with intention to steal it, accidentally kills a person not known by him to be near.

Harris, 172.

It is improbable, however, that this technical rule would now be acted on.

Broom, C. L., 5th ed., 904.

PAPER XX.

1. Q.—What defences besides *not guilty* are open to a person charged with a criminal offence?

A.—He may plead a *dilatory plea*, or a *special plea in bar*, or he may put in a *demurrer*.

Dilatory pleas, so called because they merely postpone the result, are:

(*a.*) A *plea to the jurisdiction*, that the indictment is taken before a Court which has no cognizance of the offence. This plea, however, is seldom resorted to, as the objection may be more conveniently raised in other ways; (*b.*) a *plea in abatement*, which was formerly used chiefly where the defendant was misnamed in the indictment, but has become obsolete, owing to the powers which the Court now has of amending the indictment.

Harris, 401, 403.

Special pleas in bar.—(Q. v., Q. 2, Paper 2.)

A *demurrer* is an objection to the indictment in point of law only. It is seldom resorted to, as it amounts to an admission by the prisoner, that the

facts alleged in the indictment are true, and there are other ways in which objections in law to the indictment may be taken without admitting the facts alleged in the indictment.

Harris, 408.

2. Q.—Define *obtaining by false pretences* and *perjury*.

A.—*Obtaining by false pretences* is the false pretence of an existing fact with intent to defraud, and the obtaining of money or goods by means of such false pretence.

Perjury is the crime committed by one who, when a *lawful* oath is administered to him in some proceeding *in a court of justice* of *competent jurisdiction*, swears *willfully*, *absolutely* and *falsely* in a matter *material* to the issue or point in question.

Harris, 82.

3. Q.—What is the law as to giving evidence of a prisoner's bad character?

A.—Such evidence, as it does not directly tend to prove the matter in issue, is in general inadmissible; but where evidence of the prisoner's good character has been given on his behalf this may be disproved by evidence that he has a bad character, and for this purpose previous convictions may be proved against him.

Harris, 458; Q. 6, Paper III.; Q. 4, Paper XIII.

4. Q.—Can a deposition made before trial ever, and when, be received in evidence upon the trial of an indictment?

A.—If at the time of the trial a person, who has made a deposition before the trial, is dead, or so ill as to be unable to travel, or is kept out of the way by the prisoner, or (perhaps) is too mad to testify, the deposition made by him before trial, may be received in evidence upon the trial, provided that the deposition was made on oath, before a magistrate, in the presence of the prisoner, and that the prisoner had a full opportunity of cross-examining the witness.

Harris, 461.

5. Q.—What provocation will reduce homicide, which would otherwise be murder, to manslaughter?

A.—The provocation must be great and the cause of death must be inflicted at once while the provocation is still exercising its full influence. Where the instrument causing death is a deadly weapon, the provocation must be of the gravest nature to render the offender guilty of manslaughter only; but a slighter provocation will suffice if the instrument used is one not likely to cause death, as a stick or a blow with the fist; in fact, the mode of resentment must bear a reasonable proportion to the provocation to

reduce the offence to manslaughter. If the retaliation be not immediate, and clearly traceable to the influence of the provocation, the offence will be murder.

Harris, 179; *Broom, C.L.*, 902, 903.

6. Q.—Define *malice aforethought* as applicable to the crime of murder.

A.—*Malice aforethought* as applicable to the crime of murder is not to be understood in the ordinary sense of ill-will or hatred towards an individual; in fact, to constitute murder it is not necessary that the prisoner should have had any enmity towards the deceased, nor would proof of the absence of ill-will furnish the accused with any defence, provided that the charge against him were established in other respects. In the legal sense, malice aforethought as applicable to murder may be said to mean a guilty state of mind, consisting in either (1) an intention to cause death, or (2) an intention to do a bodily injury such as is likely or sufficient in the ordinary course of nature to cause death, or (3) wanton indifference to life in the performance of an act likely to cause death, whether lawful or not; or, as it would seem (4) an intention to commit any felony. It is said to be either *express* or *implied*, according to the circumstances under which the death was caused.

Harris, 175, 177.

PAPER XXI.

1. Q.—State the cases in which a married person who marries during the life of the former husband or wife, is not punishable for bigamy.

A.—(i.) Where the second marriage was contracted elsewhere than in Canada, by any other than a subject of Her Majesty resident in Canada.

(ii.)—Where at the time when the person marries again the former husband or wife shall have been continually absent for the space of seven years immediately preceding the second marriage, and shall not have been known by such person to be living within that time.

(iii.) Where the first marriage has been declared void by the sentence of any court of competent jurisdiction.

(iv.) Where there is a second marriage by one who, at the time of such second marriage was *divorced* from the bond of the first marriage.

Harris, 139; R. S. C., c. 16, s. 4.

2. Q.—Two or more persons combine to do an unlawful act, and one of them kills a man; of what crime are they guilty?

A.—Of murder, if the act which the persons combine to commit is a felony; otherwise it will be manslaughter, assuming that there has been no direct intention to cause death.

3. Q.—What is the crime committed by a person sending a ship to sea in an unseaworthy state likely to endanger life, and by what can he exempt himself from it?

A.—The party is guilty of a misdemeanour, unless he can prove that he used all reasonable means to make and keep the ship seaworthy, and was ignorant of such unseaworthiness, or that the sending the ship to sea in an unseaworthy state was, under the circumstances, reasonable and justifiable.

Harris, 154.

4. Q.—What is the distinction between principals and accessories, and how is each class usually divided?

A.—A principal in an offence is either the actual perpetrator of the crime, in which case he is called a principal in the first degree; or one present, aiding

and abetting, in which case he is called a principal in the second degree. An accessory is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either before or after the act committed. An accessory *before the fact* is one who, being absent at the time of the committal of the crime, yet counsels, procures, or commands another to commit the crime. An accessory *after the fact* is one who, knowing a felony to have been committed, receives, relieves, comforts or assists the felon.

Harris, 34, *et seq*; Q. 3, Paper XVIII.

5. Q.—What is the offence of *blasphemy?*

A.—The offence of blasphemy may be committed by denying the being or providence of the Almighty, or by contumelious reproaches of our Lord and Saviour Christ; also, all profane scoffing at the Holy Scriptures, or exposing it to contempt and ridicule.

Harris, 74.

6. Q.—Give a general description of the offence of *bribery* and of the elections in which it principally prevails.

A.—*Bribery* is the corrupt treatment of one intrusted with a public charge, to influence him in the discharge of his duty in that character.

The offence comprises acts which may be divided into two classes:—

1. Where some person concerned in the administration of public justice is approached by one bringing him a reward, in order to influence his conduct in his office.

2. Where some person having it in his power to procure, or aid in procuring, for another a public place or appointment, is so approached.

This latter class may be divided into cases. (1) when the place or appointment is in the gift of some public officer; and (2) when it is determined by public election.

Harris, 89.

Bribery principally prevails in *parliamentary* and *municipal* elections.

Harris, 91 and 96.

PAPER XXII.

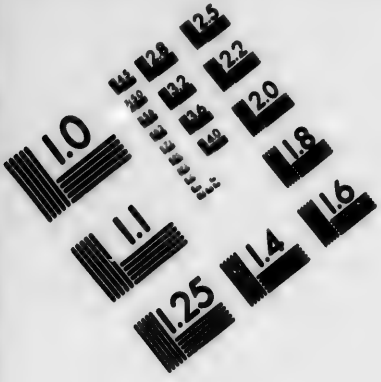
1. Q.—Is it lawful to compound a misdemeanour, and under what circumstance is it occasionally done after conviction?

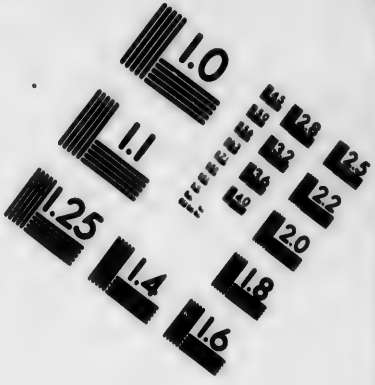
A.—*To compound a misdemeanour* seems to be strictly illegal, as impeding the course of public justice. But when a person has been convicted of a misdemeanour more immediately affecting an individual (such as one for which he might sue and recover in a civil action), as a battery, imprisonment, or the like, the Court not uncommonly allows the defendant to *speak with the prosecutor* before any judgment is pronounced; and if the prosecutor declares himself satisfied, inflicts but a trivial punishment.

Harris, 101.

2. Q.—Are dying declarations admissible in evidence in any, and, if in any, in what cases?

A.—The declarations of a person, who is dying in consequence of injuries received from another, may be made orally or in writing to a justice of the peace or some competent person, and may, after the death





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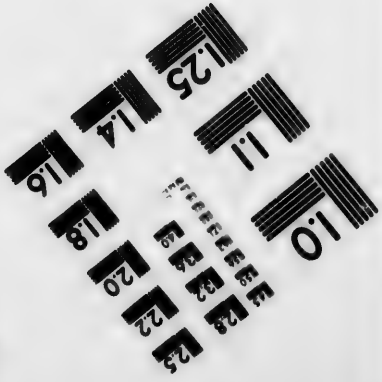

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of the dying person, be proved by the person who heard the expressions used, but under the following conditions:

(i.) The cause of the death of the declarant must be the subject of the enquiry;

(ii.) The circumstances of the death must be the subject of the declaration;

(iii.) The declaration must appear to have been made at a time wher the deceased was perfectly aware of his danger and entertained no hope of recovery;

(iv.) It must have been made in reference to matters as to which the deceased, if he had lived, would be a competent witness.

Harris, 461, 468; Q. 5, Paper, XVII.

3. Q.—If A. be charged with feloniously forging and uttering ten cheques on the same bank for different amounts in the same name, how many indictments is it necessary to prefer in order to give evidence of all the forgeries, and give the reason?

(*Cf.* Q. 6, Paper X.)

A.—If the offence charged constitute one transaction, as if the charge be that A. uttered all the ten cheques at the same moment, there will be no objection to including all the charges in one indictment;

but if the forgeries or utterings be distinct, then it will be desirable to prefer different indictments, applicable severally to each. If an attempt were made to include two or more forgeries in the same indictment, the judge would, on the application of the defendant before plea, quash the indictment; or if the objection were made after plea, would call upon prosecutor to elect upon which count he would proceed. The objection to charging distinct felonies in the same indictment is that it would embarrass the prisoner in his defence.

Harris, 366.

It might also prejudice him in his challenge of the jury; for he might object to a juryman's trying one of the offences though he might not object to his trying another.

4. Q.—If A. be indicted for obtaining goods by means of false pretences, and the evidence in support thereof establishes the false pretences, but fails to establish that A. obtained the goods, can A. be convicted of any offence? and, if so, what?

A.—Yes; he may be convicted of an *attempt* to obtain the goods by false pretences, provided that the evidence shews he was guilty of the attempt.

Harris, 473.

5. Q.—What is the least amount of evidence required to sustain an indictment for perjury?

A.—Two witnesses. It will suffice if the perjury be directly proved by one witness, and that corroborative evidence in some particular point be given by another. Moreover, when the alleged perjury consists in the defendant having contradicted what he himself swore on a former occasion, the testimony of a single witness in support of the defendant's own original statement will support a conviction.

Harris, 86.

6. Q.—Is a wife an admissible witness against her husband in any, and, if any, what criminal cases?

A.—She is an admissible witness against her husband on—

1. A charge of high treason;
2. A charge of violence to the person of his wife.

Harris, 432.

PAPER XXIII.

1. Q.—Give an example of *justifiable homicide* and one of *excusable homicide.*

A.—Where the proper officer executes a criminal in strict conformity with his legal sentence, the homicide is justifiable. It is also justifiable when an officer of justice, or other person acting in his aid, in the legal xercise of a particular duty kills one who resists or prevents him from executing it; or when it is committed in the *prevention* of a forcible and atrocious crime.

When a man kills another, upon sudden affray, in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling, it is excusable. It is also excusable when a man is at work with a hatchet, and the head flies off by accident, and kills a bystander.

Harris, 163-169; (Q. 1, Paper I; Q. 4, Paper XVI.)

2. Q.—What is the *gist* of the crime of *conspiracy?* Answer in one word.

A.—*Combination.*

Harris, 134; (Q. 1, Paper IX.)

3. Q.—What verdicts are there, any one of which may be rendered on a trial for murder?

A.—Murder, manslaughter, and attempt to murder.

Harris, 473-474.

4. Q.—If a pickpocket should insert his hand in a person's empty pocket with intent to steal the purse which he supposed to be in it, could he be convicted of any, and if so, of what crime?

A.—Yes; he is guilty of a common law misdemeanour. But he cannot be convicted of larceny, because there was nothing in the pocket which could be carried away; nor can he be convicted of an attempt to steal, because, even if no interruption had occurred, the design would not have been carried out successfully.

Harris, 233.

5. Q.—Distinguish *burglary* and *house-breaking*.

A.—(See Q. 7, Paper II., and answer thereto.)

6. Q.—What difference is there between *larceny* and *robbery* in regard to the *removal* of the goods?

A.—In *larceny* there must be some *severance* of the property, but it is not necessary that the accused should succeed in carrying it away.

Harris, 233.

In *robbery* there must be something more, namely, a *complete removal* from the person of the party robbed. Removal from the place where it is, if it remains throughout with the person, is not sufficient. *Harris*, 241.

PAPER XXIV.

1. Q.—What is the distinction between an arrest by a *private person on view*, and an arrest by a private person on *suspicion*, as regards the breaking open doors, and as regards the legal consequences of such person killing, or being killed, in making the arrest?

A.—The distinction is that in the former case he may break open doors to effect the arrest; and the consequences of his killing or being killed are generally the same as if an officer were arresting, *i.e.*, the killing would be justifiable on the part of the private person, if the criminal was resisting his arrest or attempt to arrest; and murder or manslaughter on the part of the criminal.

In the latter case, the private person is not justified in breaking open doors; and if either party kills the other, it is said to amount to manslaughter at the least.

Harris, 348.

2. Q.—On a trial for obtaining goods by *false pretences*, is evidence admissible to prove that the prisoner has *previously*, and *subsequently*, to the trans-

action in question, obtained other property from some other person by the same pretence. If so, for what purpose?

A.—Evidence that the prisoner has on a *prior* occasion obtained property from some other person, by means of a similar false pretence, is admissible to support the evidence of intent to defraud; but that evidence of a similar false pretence on a *subsequent* occasion is not admissible.

Harris, 265.

3. Q.—Give an example shewing how a person may be guilty of *larceny*, although the goods were voluntarily delivered to him by the owner.?

A.—*Where the delivery does not alter the possession in law:* in other words, where, although there is a delivery of the goods by the owner, yet the possession in law remains in him, the goods may thus be stolen by the person to whom they are thus delivered.

E.g.—The butler who has merely the care and oversight of the plate of his master, appropriates it. He is guilty of larceny.

Harris, 229.

4. Q.—In what cases is the Court bound to grant a *reprieve* to a prisoner?

A.—In two cases. When a woman sentenced to death is ascertained to be pregnant; and when the prisoner becomes insane after judgment.

Harris, 503.

5. Q—What is the general rule as to the competency of the *wife* of one of two prisoners *jointly indicted and tried*, as a witness for or against the other prisoner?

A. The wife is incompetent as a witness for or against the other prisoner.

Harris, 432.

6. Q. Explain the meaning of *constructive breaking* in burglary, and give an example.

A.—(See answers to Q. 2, Paper VI.; Q. 3, Paper VIII.; and Q. 2, Paper IX.)

7. Q.—Under what circumstances will a person be guilty of *larceny* of goods which he has *found*?

A.—(See answers to Q. 6, Paper XI, and Q. 5, Paper XVI.)

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